

SECRETARY KEMP: All right. I think we have got everybody that's coming in person. Let me go ahead and call the special called meeting of the State Election Board, December 15, 2010 to order. If you will just pause with me for a minute, I'll give the invocation real quick. Let us pray.

(INVOCATION)

If you would rise we will say the pledge.

(PLEDGE OF ALLEGIANCE)

SECRETARY KEMP: The first order of business, I just wanted to congratulate Judge Tailor. I know you all heard Wes Tailor, our elections director, has been appointed to state court judge and is going to be sworn in pretty soon. We are excited for him and wish him the best in the future. He is certainly -- I know this Board will agree because y'all have seen more so than I have -- that Wes have done a great job to help bring Georgia elections even further forward than it was when he got here. I think a lot of the work that you have done will have a lasting impression and a good one on the state. So we appreciate your service and sorry we can't recognize you at a full meeting. But maybe we will be able to do that. But we certainly appreciate all the work that you have done on behalf of this office and the state. Wes, we really appreciate it.

WESLEY TAILOR: Thank you. Thank you very much.

SECRETARY KEMP: With that, I will go ahead and call the first case, SEB Case No. 2008-000036, Taylor County, Quinton Talton. Ms. Brumbaugh, are you going to give us an update?

MS. BRUMBAUGH: Sure. This case went to a hearing in November. I believe it was November 1st, and the Board should have copies of the initial decision. The initial decision came back that Mr. Talton had violated O.C.G.A 21-23-85 and 21-25-74 and that he was in unlawful possession of the ballots of Memorial Stinson and Billy Jean King. The ALJ did not find that Mr. Talton intimidated these two electors. And, in fact, there is really no evidence in the record to support that. Both the witnesses testified that they weren't afraid of Mr. Talton when he came to their home as they were voting. The ALJ recommended a \$250 civil penalty for each ballot. So \$500 total investigative costs and a public reprimand. So the Board can accept, reject or modify this initial decision as it sees fit.

SECRETARY KEMP: Let me just state for the record that we have in attendance in person Mr. Worley, myself -- Secretary of State Brian Kemp -- and Mr. Webb. And then Mr. McIver is attending by conference call. Any questions for Ms. Brumbaugh?

MR. MCIVER: I am going to have some discussion.

SECRETARY KEMP: Hold that thought just a minute. Have we gotten anyone else that wishes to speak in regard to this case? Anyone else wishes to speak in regards to this case? Okay. Hearing none, Mr. McIver, you got the floor.

MR. MCIVER: Ms. Brumbaugh, in what ways does this judge's decision vary from our normal course of handling these matters and the, if you will, remedies that are deemed necessary?

MS. BRUMBAUGH: Honestly, I had recommended a very similar civil penalty to this. The fact that the judge ordered investigative costs means that Quinton Talton really should have taken a settlement because we don't usually include the investigative costs. The public reprimand is similar to what we do in our consent orders. There does not seem to be a cease and desist. That would be the only thing that is typically in consent orders that does not seem to be in this initial decision.

MR. MCIVER: Does anybody else want to attempt an answer at this, for example, Mr. Worley who has a good history here?

MR. WORLEY: Well, I think the penalty is higher than we normally impose for handling absentee ballots, per ballot.

MR. TAILOR: May I ask you, when you say Mr. Worley, you mean in consent orders --

MR. WORLEY: In consent orders --

MR. TAILOR: -- so when somebody takes responsibility for their actions?

MR. WORLEY: Yes. I believe our usual penalty is \$100 per ballot. This is two and a half times that given, one, that they did not consent. I don't think that is an unreasonable -- well, I think that is an appropriately large fine.

SECRETARY KEMP: May I ask, Ms. Brumbaugh, how much are the investigative costs?

MS. BRUMBAUGH: I think we calculated them at about \$1,300.

MR. HARVEY: Correct, approximately. I sent you the exact figure, but it's about \$1,300.

MR. WEBB: So it's the \$1,300 plus the \$500? Roughly \$1,800?

MS. BRUMBAUGH: Yes.

SECRETARY KEMP: Anything else, Mr. McIver?

MR. MCIVER: No, sir. This certainly dispenses any discussion I've got. I obviously have some opinions, but there will be a time for that.

SECRETARY KEMP: Well, I know I am comfortable with the amount of the penalties. I think certainly if we want to add a cease and desist, we can. I am open for a motion on whatever

the Board wants to do.

MR. MCIVER: Well, I move we adopt the administrative law judge's decision with a proviso that we add a cease and desist.

MR. WORLEY: I will second that.

SECRETARY KEMP: Okay. We got a motion by Mr. McIver and a second by Mr. Worley that we adopt the report before us and add a cease and desist; is that correct?

MR. MCIVER: Yes, sir.

SECRETARY KEMP: With the penalties and fines that were stated. Any other discussion? Hearing none, all in favor of this motion and Second please say, Aye.

THE BOARD: Aye.

SECRETARY KEMP: All opposed same sign. Okay, the motion carries. All right, Ms. Brumbaugh.

MS. BRUMBAUGH: The next case is the Greene County case. John Clark, the attorney for the respondents, had requested a continuance. It's in your packet. He has agreed to waive the APA provisions requiring 30 days -- three, 30-day extensions to 90 days and is willing to meet on February 24th to consider this case then.

SECRETARY KEMP: Anyone else wish to speak on this case? We have any questions for Ms. Brumbaugh first? Hearing none, anyone else wish to speak on this case? Okay, hearing none --

MR. WORLEY: I have a question for Ms. Brumbaugh. If we wanted to approve the administrative law judge's decision, would we require Mr. Clark's presence?

MS. BRUMBAUGH: No. You could approve it. Now, I think that that would probably -- you would probably be doing some discussion, and that might be a slightly different question. But if there's no action taken by the Board, then it is by operation of law. It becomes the law of the case. Here we have a waiver until February 24th. So we are not going to lose anything by waiting.

MR. WORLEY: And that is our next regular scheduled meeting?

MS. BRUMBAUGH: Yes.

SECRETARY KEMP: Any other discussion? Now --

MR. MCIVER: I have a question for Mr. Worley. David, don't we grant one extension pretty

much automatically?

MR. WORLEY: Yes, we do.

MR. MCIVER: This would be the first extension; is that correct?

SECRETARY KEMP: Yes.

MR. MCIVER: So this would be consistent what with we have done in the past? At least that is what my notes reflect.

SECRETARY KEMP: It would. I think the reason we brought this up was because of the timetable we are facing and the APA, right?

MS. BRUMBAUGH: Yes.

SECRETARY KEMP: It's more kind of a technical thing. I personally think it would be very appropriate to have this back before us in front of the full board.

MR. WORLEY: In that case, Mr. Secretary, I will make a motion that we table this Greene County matter, the two cases involved here, until February 24th and accept the waiver that Mr. Clark is offering.

MR. MCIVER: I second.

SECRETARY KEMP: Is that an appropriate motion to table?

MR. TAILOR: And I'm sorry, I am not an expert on Robert's Rules of Order, but I remember in a previous meeting we had, Mr. Chairman, where you'd have to pass a motion to take it off the table. Whereas, previously, I think you've just moved to continue it until the next regular scheduled meeting. So --

SECRETARY KEMP: So we need a motion?

MR. WORLEY: So we should move to continue this?

MR. TAILOR: I believe that's right.

MR. WORLEY: Then I would withdraw my previous motion and make another motion that we continue both of these Greene County cases until February 24th.

SECRETARY KEMP: When you say, "both cases," you are talking about?

MR. WORLEY: State Election Board versus Dorothy Wright and State Election Board versus Marion Rhodes.

SECRETARY KEMP: But all are under tab 2; correct?

MR. WORLEY: Right.

SECRETARY KEMP: All right. We have got a restated motion from Mr. Worley. Do we have a Second?

MR. MCIVER: Second. I withdraw my earlier second, and I second this motion.

SECRETARY KEMP: We got a motion and a second for a continuance on both the Greene County cases before us. Any other discussion? Hearing none, all in favor say, Aye.

THE BOARD: Aye.

SECRETARY KEMP: All opposed same sign. Okay, that motion carries. Next case, Ms. Brumbaugh.

MS. BRUMBAUGH: The final case on the agenda is State Election Board versus Ludwig Medlin. The initial decision, the names of Eddie Fowler and Ludwig Medlin are both on the initial decision. Judge Fowler had entered a consent order which this Board accepted at the November meeting. The hearing which was on October 21st related only to Mr. Medlin and that is what the initial decision relates to. It's just Mr. Medlin.

This is the case where Mr. Medlin who is a non citizen had registered to vote and had voted. Mr. Medlin stated that the reason that he did this was because Judge Fowler told him he could do it. The initial decision came back that there was no violation because Mr. Medlin -- the statutes in issue are both strict liability statutes. They require a knowing behavior. And the judge reasoned that if Mr. Medlin was relying on the judge's advice then his decision to register to vote and to vote, it was not a knowing violation of the law. So she found no violation.

SECRETARY KEMP: It is my understanding that we have a settlement pending with the judge?

MS. BRUMBAUGH: No. Y'all accepted the settlement with the judge at the November meeting.

SECRETARY KEMP: Okay.

MR. WEBB: Can you refresh our memory on what the settlement was?

MS. BRUMBAUGH: The settlement was for \$250.

SECRETARY KEMP: Any other questions for Ms. Brumbaugh? Is anyone wishing to speak in regard to this case, this matter?

MR. MEDLIN: I am Mr. Ludwig Medlin --

SECRETARY KEMP: Would you like to say a few words to us?

MR. MEDLIN: Yes.

SECRETARY KEMP: Come on up and let me get you to this mike right here in the middle.

MR. MEDLIN: Thank you. I take responsibility --

SECRETARY KEMP: If you don't mind, just state your name and your address for the record for us. Thank you.

MR. MEDLIN: Ludwig Medlin. 856 Nelms Road in Carnesville.

SECRETARY KEMP: Okay. Ludwig Medlin. What was your address again, sir?

MR. MEDLIN: 856 Nelms Road, N-E-L-M-S. That's in Carnesville.

SECRETARY KEMP: 856 Nelms Road, Carnesville. Okay, go right ahead, sir.

MR. MEDLIN: I take full responsibility for the fact that I did not read the small print. I did not know it was there. The aid pointed it out for the first time. I depended on the advice and kind request of Judge Fowler to vote for him. I knew that I was not allowed because I am not a citizen and a permanent resident. But Judge Fowler corrected me and said, in local elections you can vote and please do vote for me. And in federal elections, you are correct, you are not suppose to vote. So this is the story. As for the reason for my being in the court, I needed a marriage license.

SECRETARY KEMP: Okay. Any questions for Mr. Medlin? Okay, thank you, sir. Is there anyone else wishing to speak in regards to this matter? Any of the Board members have any questions for Ms. Brumbaugh or comments for discussion?

MR. WORLEY: Mr. Secretary, I had a comment. When we referred this to the Attorney General's Office, we referred it because Mr. Medlin had once said, or his side of the story which I accepted -- and Judge Fowler was taking a different position at that time -- so it was referred on to the Attorney General's Office. Since then Mr. Fowler has, essentially by entering into the consent order, admitted that he had said the wrong thing to Mr. Medlin. So I don't think Mr. Medlin is at fault at all here under these circumstances. I think that's what the administrative law judge found and, therefore, I would be in favor of adopting the opinion of the administrative law judge.

MR. WEBB: I Second.

MR. WORLEY: I would make that a motion, yes.

SECRETARY KEMP: Basically a motion to accept the administrative law judge's report and Mr. Webb's Second. Any other discussion? Hearing none, all in favor of the motion say, Aye.

THE BOARD: Aye.

SECRETARY KEMP: All opposed same sign. Motion carries. All right. That's all the business we have before us today. I did want to just mention I forgot to call on public comment. I don't think anybody had filled out a card for public comment. But if anyone would like to address us on an unrelated matter, I would be willing to entertain that. Seeing no one, I will take a motion to adjourn.

MR. MCIVER: So moved.

MR. WORLEY: Second.

SECRETARY KEMP: I got a motion to adjourn and a Second. Again, we want to wish Mr. Tailor the best in the future.

MR. TAILOR: Thank you.

SECRETARY KEMP: With that, all in favor of adjourning, please say, Aye.

THE BOARD: Aye.

SECRETARY KEMP: Motion carries. Mr. McIver, we are cutting the clock off.

MR. MCIVER: All right. Thank you, sir.

SECRETARY KEMP: Have a good night. Thank you gentlemen.

(MEETING ADJOURNED AT 3:15 P.M.)